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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re A.K., Jr., a Person Coming
Under the Juvenile Court Law.

B294710

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. 18CCJP03503)

Plaintiff and Appellant,

v.

A.K., Sr.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Danette J. Gomez, Judge. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Appellant.

A.K., Sr. (Father) appeals from the dependency court's dispositional findings and orders concerning his son A.K., Jr. (the child). Father contends that evidence did not support the juvenile court's finding under Welfare and Institutions Code section 361.2¹ that it would be detrimental to place the child with him. As we explain, we disagree. Substantial evidence supported the court's finding of detriment. Father lived in Georgia and had no contact with his son for 10 years before the dependency proceedings. Also, placement with Father would hamper the minor's access to services, and ability to maintain contact with his half-siblings as well as complicate his efforts to reunify with his mother with whom he had lived all his life. Accordingly, we affirm.

BACKGROUND

The family consists of Father, the child A.K., Jr. (born in 2004) and the child's mother, C.P. (the mother).² The parents divorced when the child was two years old. The mother retained custody of the child, and she remarried and had three more children. Father lives in Georgia and is a noncustodial parent. Before the current proceedings, the child resided with his mother, his stepfather, and his half-siblings.

On May 29, 2018, the child came to the attention of the Department of Children and Family Services (DCFS) based on a referral that his stepfather had engaged in domestic violence against the child's mother; had physically abused the child,

¹ All statutory references are to Welfare and Institutions Code.

² Neither the child nor his mother are parties to this appeal.

and his three younger half-siblings and that their mother failed to protect them from the stepfather. DCFS filed a section 300 petition under subdivision (b)(1), based on the domestic violence and child abuse allegations, removed the child and the other children from stepfather's custody, and allowed the children to remain with the mother so long as she did not allow stepfather back into the home or have access to the children.

Father's whereabouts were not known when the petition was filed, but the mother reported that he lived out of state. She also stated that Father had paid child support occasionally over the years, but she had not heard from Father since 2014, and that Father had not contacted the child since 2007. The child had ADHD, cognitive delays, and he was receiving services.

At the July 2018 jurisdiction hearing, the juvenile court sustained count b-2 (describing domestic violence between the mother and stepfather), removed the younger siblings from the stepfather, and ordered family maintenance services for the mother. The juvenile court continued the disposition hearing for the child so that Father could be located.

DCFS located Father in Georgia. He disclosed that a Louisiana court had previously recognized him as the child's presumed father when it granted full custody to the mother. Father reported that he maintained contact with the child for a while, but conceded that he had no contact with his son for the 10 years before the proceedings. Father told the DCFS investigator that he was willing to assume custody of his son. The juvenile court appointed counsel for Father.

Father did not appear at the August 2018 disposition hearing for the child, and did not request custody of his son. Instead, Father requested an order for telephone and video contact with the child. The juvenile court declared the child a

dependent, and ordered the child “removed” from Father’s custody and placed with the mother. The court granted Father’s request for telephone and video contact and also ordered unmonitored visits for Father in Los Angeles County.

In October 2018, DCFS discovered that the mother had allowed the stepfather to reside in the home and have unmonitored contact with the children in violation of the juvenile court’s orders. DCFS removed the children from the mother, placed the child in a foster home, and filed a supplemental petition under section 387, alleging that the previous disposition had not protected the children.

At the detention hearing on the section 387 petition in mid-November 2018, Father appeared with counsel and requested that the child be released to his custody. DCFS, the mother’s counsel, and counsel for the child opposed the request, pointing out that Father had no contact with the child for 10 years before the proceedings and that he and the minor had no relationship, noting that they had just recently begun telephonic contact. The court denied Father’s request and scheduled a hearing to adjudicate the section 387 petition for early December 2018.

Father did not attend the adjudication of the section 387 petition. The juvenile court sustained the petition and noted that Father was nonoffending. Father’s attorney asked the court to place the child with Father in Georgia. Father acknowledged that he had limited contact with the child over the years, but Father’s counsel also claimed Father did not know the whereabouts of the child until recently, even though he had made occasional child support payments.

DCFS and the child’s attorney asked the court to keep the child in his foster care placement. The child who was 14 years

old at the time, told counsel that he did not want to reside with Father because he had not seen him in years and had no relationship with him. Counsel noted Father had made no effort to see the child until after the section 387 supplemental petition was filed. Counsel indicated that the child felt safe in his foster home, had developed a good relationship with his foster parents, and needed Regional Center services because of his developmental delays and ADHD. Counsel stated that the minor needed more time to develop a relationship with Father over video and telephone contact and, thus, release to Father's custody would be premature and detrimental.

The juvenile court removed the child from his mother and ordered visitation, reunification services for the mother and ordered that the child remain placed in foster care. As to Father, the court found he had not been in the child's life for a significant period and that it appeared that it was Father's choice not to maintain a relationship with his son. The court, therefore, found it would be detrimental to place the child with Father, and continued the order for unmonitored visitation in Los Angeles County and frequent telephone and video contact for Father and the child. The court ordered DCFS to provide family reunification services to Father, noting that Father had recently purchased a telephone for the child to use to maintain contact with him.

Father filed a timely notice of appeal.

DISCUSSION

On appeal, Father argues that the juvenile court erred when it denied his request for custody because substantial evidence did not support the court's conclusion that it would be detrimental to place the child in his custody at the disposition of the supplemental section 387 petition based solely on the lack of a relationship between Father and the child, and the child's preference to stay in California.

After a juvenile court asserts dependency jurisdiction over a child, it then considers the disposition, including a child's placement. (§ 358, subd. (a)(1); Cal. Rules of Court, rules 5.684(g) & 5.690.) Under section 361.2, where a court orders removal of a child from a custodial parent under section 361, the court shall determine whether there is a parent of the child, with whom the child was not residing at the time, who wants to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child. (See § 361.2.)

The detriment need not be related to parental action, and emotional harm is relevant to a detriment analysis. Therefore, the juvenile court can consider whether placement with the noncustodial parent would cause the child emotional harm as well as the child's preference in the placement. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1425–1426.)

A finding of detriment under section 361.2 is reviewed for substantial evidence. (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1825.) Thus, the appellate court views "the evidence in the light most favorable to the trial court's order, drawing every reasonable inference and resolving all conflicts in support of the

judgment.” (*In re Marina S.* (2005) 132 Cal.App.4th 158, 165.) If any substantial evidence, contradicted or uncontradicted, supports the judgment, no matter how slight, the judgment must be affirmed.

Substantial evidence in the record supports the court’s finding of detriment based on the absence of a parent/child relationship. Father had no contact with the child and played no role in the child’s life for the 10 years before these proceedings. Father’s occasional payment of child support over the years belies his claim that he had no way to find his son during that time. Moreover, even after Father was granted in-person visitation and telephone contact at the adjudication of the section 300 petition in August 2018, it appears that Father did not immediately reach out to the child; he did not establish telephone contact until after the section 387 petition was filed. Thus, Father’s conduct supports the court’s finding that the absence of a relationship between Father and the child was Father’s choice.

Father’s behavior distinguishes this situation from those cases cited in his brief, specifically, *In re John M.* (2006) 141 Cal.App.4th 1564, 1571 and *In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1262, in which the Fathers’ separation from their children was beyond the Fathers’ control and not a matter of their choice.

The court’s finding here is also supported by other evidence, including the child’s preference for placement; evidence that the child had developed a relationship with his foster family; and that moving to a distant state might hamper the child’s efforts to maintain contact with his half-siblings, reunify with his mother and limit his access to services for his developmental delays and ADHD. Given the totality of the circumstances, the juvenile court did not err in finding that it would be detrimental

to place the child with Father when it adjudicated the section 387 petition.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.